

REMARKS

Claims 157, 159, 160, 162, 163, 165, 166, 168-173, 175, 176, 179, 180, 182, 183, 185, 186, 188, 189, 191-228, 230, 232-247, 249, 250, and 252-287 are pending in the application.

Rejection Under 35 U.S.C. § 102(e)

Claims 157, 159, 160, 162, 163, 165, 166, 168-173, 175, 176, 179, 180, 182, 183, 185, 186, 188, 189, 191-228, 230, 232-247, 249, 250, and 252-287 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,265,565. Applicants respectfully disagree and traverse.

37 C.F.R. §1.131(a) states that a declaration may be submitted "to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based." Therefore, in response to the rejection of the claims under 35 U.S.C. § 102(e), Applicants submit concurrently herewith the Declaration of Towia Libermann Under 37 C.F.R. §1.131 with Exhibits A-B. In the Declaration, inventor Towia Libermann demonstrates that he had possession of a polynucleotide having the nucleotide sequence of SEQ ID NO:1 in this country prior to April 3, 1998. Applicants note that U.S. Patent 6,265,565 does not claim priority to an earlier filed application and as such, the filing date, April 3, 1998, is the effective date of U.S. Patent 6,265,565. Thus, U.S. Patent 6,265,565 is not available as prior art. Accordingly, Applicants respectfully request that the rejection under § 102(e) be withdrawn.

Conclusion

Entry and consideration of the above remarks is respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Applicants respectfully request that the above-made remarks be entered and made of record in the file history of the instant application. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

If there are any fees due in connection with the filing of this paper not accounted for herein, please charge such fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should be charged to our Deposit Account.

Dated: April 3, 2003

Respectfully submitted,

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